



PEACE NEGOTIATIONS
POST-CONFLICT CONSTITUTIONS
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POLICY PLANNING WHITE PAPER: REPURPOSING FROZEN RUSSIAN ASSETS

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Executive Summary

In February 2014, Russia began its war against Ukraine by capturing and occupying Crimea and capturing parts of Donbas. The situation further escalated in February 2022, when Russia launched its ongoing full-scale invasion of Ukraine. The costs of Ukraine's recovery following Russia's invasion are significant and are estimated to be hundreds of billions of dollars.¹

Globally, many States responded to Russia's invasion of Ukraine by imposing economic sanctions on Russia.² These sanctions have resulted in the freezing of a significant amount of assets of the Russian State, as well as assets of Russian individuals and private companies. Ukraine has called for these frozen Russian assets to be repurposed to fund its recovery efforts. This proposal has gained notable traction and support internationally.³ However, existing international and domestic legal mechanisms make repurposing of frozen Russian assets very difficult. Understanding these existing difficulties is critical to understanding what solutions, legislative or otherwise, are needed.

The opportunities and difficulties surrounding the repurposing of frozen Russian assets vary by asset type. For example, repurposing the assets of sanctioned Russian nationals and privately-owned companies may be possible by establishing criminal liability. By contrast, State-owned assets, such as Central Bank reserves, are afforded heightened protection under international and domestic law. The repurposing of any Russian State-owned assets will need to be done without unduly infringing on legal immunities that Russia is entitled to as a sovereign State.

¹ Communications Department of the Secretariat of the CMU, *Denys Shmyhal: russian mobilization and fake referendums can not change anything for us, we will liberate our territories*, (Sept. 23, 2022), available at <https://www.kmu.gov.ua/en/news/denys-shmyhal-rosiiska-mobilizatsiia-ta-feikovi-referendумы-dlia-nas-nichoho-ne-zminiuiut-my-budemo-zvilniaty-svoi-terytorii>.

² See Castellum.AI, *Russia Sanctions Dashboard*, (current as of Feb. 2023), available at <https://www.castellum.ai/russia-sanctions-dashboard>.

³ See, for example, Ministry of Finance of the Republic of Lithuania, *Minister of Finance G. Skaistė: "Russia's Frozen Assets Should be Used for the Reconstruction of Ukraine"*, (May 24, 2022), available at <https://finmin.lrv.lt/en/news/minister-of-finance-g-skaiste-russias-frozen-assets-should-be-used-for-the-reconstruction-of-ukraine>; Gillian Tett, *Using Russian assets to rebuild Ukraine won't be easy*, FINANCIAL TIMES, (May 26, 2022), available at <https://www.ft.com/content/b77aa49d-1af6-4d2f-b509-ed302411f129>.

While there is a comparatively higher potential for the repurposing of frozen assets owned by sanctioned individual Russian nationals and private companies under existing law, there is also significant interest in repurposing State-owned assets as they are estimated to make up the majority of frozen Russian assets (estimated at \$500 billion (USD)).⁴ This interest has prompted the development of different legal mechanisms to allow for the repurposing of the full range of frozen Russian assets.

For further details on the underlying international and domestic law memos, please view the PILPG Policy Planning Sanctions and Frozen Assets legal analyses [here](#).

⁴ It is estimated that States have frozen over \$500 billion (USD) of Russian assets. This includes: an estimated \$300 billion (USD) of Russian Central Bank assets, but only an estimated \$58 billion (USD) worth of personal assets belonging to individual Russian nationals. See Anastasiia Zharykova, *The West freezes up to \$500 billion Russian assets*, UKRAINSKA PRAVDA, (Sept. 23, 2022), available at <https://www.yahoo.com/now/west-freezes-500-billion-russian-162206080.html>; Huileng Tan, *A US-backed global task force says it has frozen more than \$330 billion of assets from Russian oligarchs and the country's central bank in 100 days*, BUSINESS INSIDER, (June 30, 2022), available at <https://www.businessinsider.com/repo-global-task-force-freeze-330-billion-russia-oligarch-assets-2022-6>; U.S. Department of the Treasury, *Joint Statement from the REPO Task Force*, (Mar. 9, 2023), available at <https://home.treasury.gov/news/press-releases/jy1329>.

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POLICY PLANNING WHITE PAPER: REPURPOSING FROZEN RUSSIAN ASSETS

Statement of Purpose

The purpose of this policy planning white paper is to consider how frozen Russian assets may be repurposed for Ukraine's reconstruction under existing domestic and international legal frameworks. This paper outlines the existing legal framework and examines legal challenges to repurposing frozen Russian assets. This examination is important for actors seeking to successfully build on the existing and growing political will to find a legal pathway to repurpose frozen Russian assets.

Key Definitions

Discussions and articles concerning the repurposing of frozen Russian assets often use certain words and phrases interchangeably or imprecisely. For the benefit of the reader, definitions of key words and phrases are provided below.

Types of Foreign Assets

- **Central Bank reserves:** The assets of a Central Bank. A Central Bank is a public institution that functions as a State's national bank. The Central Bank manages the currency of a State or group of States and is generally responsible for monetary and financial policy.⁵
- **Assets of State-owned enterprises:** Assets that belong to an entity that is owned by a State (for instance, a State-owned telecommunications company or a national petroleum company). A State-owned enterprise may also be managed and controlled by a State.
- **Other assets of the Russian State:** Diplomatic properties and bank accounts; ships and vessels; and other assets owned by a foreign State (excluding Central Bank reserves).
- **Assets of private individuals and companies:** Assets that belong to an individual person or private company.

⁵ *What is a central bank?*, European Central Bank, (Jul. 10, 2015), available at <https://www.ecb.europa.eu/ecb/educational/explainers/tell-me/html/what-is-a-central-bank.en.html>.

Legal Terminology

- Asset freeze: Freezing an asset typically means that assets cannot be used, altered, moved, transferred, or accessed freely.⁶ Freezing does not mean that the asset has been confiscated or that ownership of the asset has changed.
- Asset seizure: Seizing an asset typically means that a government has taken forcible possession of that asset from its owner.⁷
- Asset repurposing: For the purpose of this white paper, repurposing an asset refers to a process by which a foreign State uses or distributes seized assets to another individual or entity for a purpose it deems appropriate. Appropriate purposes may include distribution to benefit persons harmed or disadvantaged by the actions of the owner of the seized asset; to support humanitarian relief; or assisting a foreign State in accommodating refugees.⁸
- Civil forfeiture: A court action brought against a property that was used or derived from the commission of an offense. Civil forfeiture allows for property to be forfeited without criminally charging the owner.⁹
- Criminal forfeiture: A court action brought as part of a criminal action along with other criminal charges. Criminal forfeiture may be used to force a convicted person to forfeit property that was used or derived from the commission of an offense.¹⁰
- Countermeasure: An action taken by a State against another State responsible for an internationally wrongful act with the aim of inducing the wrongfully-acting State to comply with its legal obligations.¹¹ In order for a

⁶ UN Security Council - Al-Qaida Sanctions Committee, *Assets Freeze: Explanation of Terms*, (Feb. 24, 2015), available at

https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/eot_assets_freeze_-_english.pdf.

⁷ Legal Information Institute, *Seized*, Cornell Law School, available at <https://www.law.cornell.edu/wex/seized>.

⁸ See, for example, Senate of Canada, *Bill S-226: An Act respecting the repurposing of certain seized, frozen, or sequestrated assets*, (Mar. 15, 2021), available at

<https://www.parl.ca/DocumentViewer/en/43-2/bill/S-226/first-reading>.

⁹ U.S. Department of Treasury, *Forfeiture Overview*, available at

<https://home.treasury.gov/policy-issues/terrorism-and-illicit-finance/asset-forfeiture/forfeiture-overview>.

¹⁰ U.S. Department of Treasury, *Forfeiture Overview*, available at

<https://home.treasury.gov/policy-issues/terrorism-and-illicit-finance/asset-forfeiture/forfeiture-overview>.

¹¹ International Law Commission, Articles on the Responsibility of States for Internationally Wrongful Acts, art. 22 (“The wrongfulness of an act of a State not in conformity with an international obligation towards another State is precluded if and to the extent that the act constitutes a countermeasure taken against the latter State [. . .].”).

measure to qualify as a lawful countermeasure, it must be proportionate, reversible, and temporary.¹²

- Reparation: An action taken to reestablish the situation prior to a violation of the law, which may be fulfilled through monetary compensation.¹³
- Sovereign immunity: A principle of international law that generally exempts ('immunizes') a sovereign State from being sued in the courts of another State.¹⁴
- Enforcement immunity: A form of sovereign immunity that protects States and their property from being subject to a decision by the court of a foreign State. This means that a decision by a foreign State cannot be enforced against another State and its property.
- Jurisdictional immunity: A form of sovereign immunity that protects States and their property from the jurisdiction of another State's courts.¹⁵ This means that States can be protected from being subject to proceedings in another State's courts.

Ukraine's Significant Need for Funds

In February 2014, Russia began its war against Ukraine by capturing, occupying, and annexing Crimea and capturing parts of Donbas. The situation further escalated in February 2022, when Russia launched its ongoing full-scale invasion of Ukraine. In March 2022, the General Assembly of the United Nations adopted a resolution characterizing Russia's actions in Ukraine as acts of aggression in violation of the United Nations Charter.¹⁶ The United Nations Human Rights Council expressed its grave concern at the "ongoing human rights and

¹² International Law Commission, Articles on the Responsibility of States for Internationally Wrongful Acts, arts. 49, 51.

¹³ See *Factory at Chorzów (Germany v. Poland)*, Judgment, 1928 P.C.I.J. (ser. A) No. 17, p. 47 (Sept. 13); Articles on the Responsibility of States for Internationally Wrongful Acts, art. 31.

¹⁴ Xiaodong Yang, *Sovereign Immunity*, in INTERNATIONAL LAW (Oxford Bibliographies), (Nov. 2020), available at <https://www.oxfordbibliographies.com/display/document/obo-9780199796953/obo-9780199796953-0018.xml>.

¹⁵ Peter-Tobias Stoll, *State Immunity*, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW, (last updated Apr. 2011), available at <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1106>, paras. 1, 4.

¹⁶ General Assembly Resolution ES-11/1, para. 2, U.N. Doc. A/RES/ES-11/1, (Mar. 2, 2022), (stating, *inter alia*, that the General Assembly "[d]eplores in the strongest terms the aggression by the Russian Federation against Ukraine in violation of art. 2(4) of the Charter.") (emphasis in original).

humanitarian crisis in Ukraine, particularly at the reports of violations and abuses of human rights and violations of international humanitarian law.”¹⁷

Russia’s actions in Ukraine have caused significant damage.¹⁸ While the precise cost of reconstruction is difficult to quantify, a December 2022 estimate by the World Bank estimated the cost of rebuilding at \$525-630 billion (USD).¹⁹ In September 2022, Ukraine estimated the total direct and indirect damages caused by Russia’s invasion to be almost \$1 trillion (USD).²⁰ The damage is concentrated in the Chernihiv, Donetsk, Luhansk, Kharkiv, Kyiv, and Zaporizhzhia oblasts.²¹

Ukraine has called for Russian assets to be seized and repurposed to fund recovery efforts.²² This proposal has gained significant traction and support internationally,²³ but has faced questions regarding its political and legal feasibility. This policy planning white paper addresses legal challenges that may arise in seizing and repurposing frozen Russian assets. As efforts to repurpose frozen Russian assets continue to develop, a clear understanding of these existing legal challenges will be essential to making use of opportunities to do so.

Freezing of Russian Assets by International Community

Following the full-scale invasion of Ukraine in February 2022, many States responded by imposing economic sanctions on Russia.²⁴ States are reported to have collectively frozen Russian assets with a value of over \$500 billion (USD),

¹⁷ Human Rights Council Resolution 94/1, U.N. Doc. A/HRC/RES/49/1, (Mar. 4, 2022), preamble para. 11, operative para. 3.

¹⁸ Communications Department of the Secretariat of the CMU, *Denys Shmyhal: russian mobilization and fake referendums can not change anything for us, we will liberate our territories*, (Sept. 23, 2022), available at <https://www.kmu.gov.ua/en/news/denys-shmyhal-rosiiska-mobilizatsiia-ta-feikovyi-referendumi-dlia-nas-nichoho-ne-zminiut-my-budemo-zvilniaty-svoi-terytorii>.

¹⁹ RadioFreeEurope, *Rebuilding Ukraine After Russian Invasion Will Cost \$500-600 Billion, Says World Bank VP*, (Dec. 4, 2022), available at <https://www.rferl.org/a/ukraine-war-reconstruction-500-billion/32161282.html>

²⁰ Kyiv Post, *Russian Invasion Has Cost Ukraine ‘\$1 Trillion’*, (Sept. 22, 2022), available at <https://www.kyivpost.com/post/1114>.

²¹ World Bank, *Ukraine Recovery and Reconstruction Needs Estimated \$349 Billion*, (Sept. 9, 2022) available at <https://www.worldbank.org/en/news/press-release/2022/09/09/ukraine-recovery-and-reconstruction-needs-estimated-349-billion>.

²² Communications Department of the Secretariat of the CMU, *Denys Shmyhal: russian mobilization and fake referendums can not change anything for us, we will liberate our territories*, (Sept. 23, 2022), available at <https://www.kmu.gov.ua/en/news/denys-shmyhal-rosiiska-mobilizatsiia-ta-feikovyi-referendumi-dlia-nas-nichoho-ne-zminiut-my-budemo-zvilniaty-svoi-terytorii>.

²³ See, for example, Ministry of Finance of the Republic of Lithuania, *Minister of Finance G. Skaistė: “Russia’s Frozen Assets Should be Used for the Reconstruction of Ukraine”*, (May 24, 2022), available at <https://finmin.lrv.lt/en/news/minister-of-finance-g-skaiste-russias-frozen-assets-should-be-used-for-the-reconstruction-of-ukraine>; Gillian Tett, *Using Russian assets to rebuild Ukraine won’t be easy*, FINANCIAL TIMES, (May 26, 2022), available at <https://www.ft.com/content/b77aa49d-1af6-4d2f-b509-ed302411f129>.

²⁴ See Castellum.AI, *Russia Sanctions Dashboard*, (current as of Feb. 24, 2023), available at <https://www.castellum.ai/russia-sanctions-dashboard>.

including about \$300 billion (USD) of Russian Central Bank assets and over \$58 billion (USD) worth of assets belonging to individual Russian nationals.²⁵

The frozen Russian assets fall into four distinct categories:²⁶

Owner of asset	Category	Definition
Russian State	Central Bank reserves	Assets of a foreign State's Central Bank. The Central Bank manages the currency of a State or group of States and is generally responsible for monetary and financial policy. ²⁷
	Assets of a State-owned enterprise	State-owned enterprises typically have a different legal personality from the State. Those assets can include sovereign wealth funds, public pension funds, and any type of enterprise that is owned and controlled by the State.
	Other assets of the State	Other assets held by a State, including: embassies; diplomatic properties and bank accounts; ships and vessels; and other assets owned by a foreign State (excluding Central Bank reserves).
Russian nationals or privately owned Russian companies	Assets of individuals and private companies	Assets owned by a private Russian national or a private Russian company under domestic law.

²⁵ See Anastasiia Zharykova, *The West freezes up to \$500 billion Russian assets*, UKRAINSKA PRAVDA, (Sept. 23, 2022), available at <https://www.yahoo.com/now/west-freezes-500-billion-russian-162206080.html>; Huileng Tan, *A US-backed global task force says it has frozen more than \$330 billion of assets from Russian oligarchs and the country's central bank in 100 days*, BUSINESS INSIDER, (June 30, 2022), available at <https://www.businessinsider.com/repo-global-task-force-freeze-330-billion-russia-oligarch-assets-2022-6>; U.S. Department of the Treasury, *Joint Statement from the REPO Task Force*, (Mar. 9, 2023), available at <https://home.treasury.gov/news/press-releases/jy1329>.

²⁶ Scott R. Anderson and Chimène Keitner, *The Legal Challenges Presented by Seizing Frozen Russian Assets*, LAWFARE, (May 26, 2022), available at <https://www.lawfareblog.com/legal-challenges-presented-seizing-frozen-russian-assets>.

²⁷ *What is a central bank?*, European Central Bank, (Jul. 10, 2015), available at <https://www.ecb.europa.eu/ecb/educational/explainers/tell-me/html/what-is-a-central-bank.en.html>.

The Proposal to Repurpose Frozen Russian Assets

There have been various proposals by international actors to repurpose frozen Russian assets for Ukraine's recovery. Ukraine has called on the international community to help fund Ukraine's recovery through frozen Russian assets.²⁸ Ukraine's proposal gained substantial traction within the European Union, Canada, and United States.²⁹ A number of States, including Poland, Latvia, Lithuania, and Estonia, have urged the European Union to use frozen Russian assets to cover the costs of Russian aggression against Ukraine.³⁰

Proposals to repurpose frozen Russian assets require freezing Russian assets as the first step and repurposing these assets for Ukraine's recovery as the second step. While many States have already taken the first step of freezing Russian assets, implementing this proposal would require States to develop mechanisms to allow for the second step of legally repurposing those frozen assets to take place.³¹

Repurposing frozen Russian assets is likely to be much more challenging than freezing such assets. Repurposing frozen Russian assets will generally require changes to the ownership of that asset. For example, in order to give assets directly to Ukraine, there will need to be a legal mechanism to make Ukraine the owner of the assets. Similarly, if a State was planning to sell the assets and provide the proceeds of the sale to Ukraine, there would need to be a legal mechanism to make the selling State the owner of the assets.

²⁸ John Revill, Silke Koltowitz, *Ukraine PM: Rich Russians should pay the bill to rebuild*, REUTERS, (July 4, 2022), available at <https://www.reuters.com/article/us-ukraine-crisis-swiss-idAFKBN2OF0RV>.

²⁹ See, for example, Ministry of Finance of the Republic of Lithuania, *Minister of Finance G. Skaistė: "Russia's Frozen Assets Should be Used for the Reconstruction of Ukraine"*, (May 24, 2022), available at <https://finmin.lrv.lt/en/news/minister-of-finance-g-skaiste-russias-frozen-assets-should-be-used-for-the-reconstruction-of-ukraine>; Gillian Tett, *Using Russian assets to rebuild Ukraine won't be easy*, FINANCIAL TIMES, (May 26, 2022), available at <https://www.ft.com/content/b77aa49d-1af6-4d2f-b509-ed302411f129>.

³⁰ LETA/BNS/TBT Staff, *Baltics, Poland call for using EUR 300 billion in frozen Russian funds to rebuild Ukraine*, BALTIC TIMES, (Feb. 9, 2023), available at https://www.baltictimes.com/baltics_poland_call_for_using_eur_300_billion_in_frozen_russian_funds_to_rebuild_ukraine/.

³¹ See, for example, Ministry of Finance of the Republic of Lithuania, *Minister of Finance G. Skaistė: "Russia's Frozen Assets Should be Used for the Reconstruction of Ukraine"*, (May 24, 2022), available at <https://finmin.lrv.lt/en/news/minister-of-finance-g-skaiste-russias-frozen-assets-should-be-used-for-the-reconstruction-of-ukraine> ("The European Union, along with Western partners, has frozen a significant part of Russia's assets, ranging from the reserves of the country's central bank to the assets of sanctioned individuals. This is a good first step, but now we have to take the second one — create mechanisms allowing to use these frozen funds as one of the sources for the reconstruction of Ukraine."); Gillian Tett, *Using Russian assets to rebuild Ukraine won't be easy*, FINANCIAL TIMES, (May 26, 2022), available at <https://www.ft.com/content/b77aa49d-1af6-4d2f-b509-ed302411f129>.

The amount of frozen Russian assets that can be legally repurposed under existing international law and domestic law is also limited. For example, the majority of frozen Russian assets are Central Bank reserves (roughly \$300 billion (USD) of an estimated \$500 billion (USD) in total frozen Russian assets). These are afforded a high degree of protection under international law.³² As a result, under the current legal regimes, it will be difficult for States to legally change the ownership of Russian Central Bank reserves and use such funds for repurposing.

Challenges to Repurposing Frozen Russian Assets

Freezing an asset prevents the owner of that asset from using that asset freely, but it does not change the ownership of that asset. By contrast, if an asset is seized, the seizing State takes possession of that asset and may use that asset itself or change the ownership of the asset. Repurposing frozen Russian assets will require frozen assets to first be seized. Repurposing assets under existing sanctions regimes is difficult, because sanctions regimes are designed to allow for the temporary and reversible freezing of assets, not their seizure and a permanent change of ownership. While there are existing frameworks to seize assets under other legal regimes (for example, domestic civil forfeiture laws³³), the potential to repurpose assets varies by asset type, with particular challenges to repurposing assets owned by the Russian State.

Repurposing frozen assets of the Russian State

Frozen assets owned by the Russian State include Central Bank reserves, assets of Russia's State-owned enterprises, and other Russian State-owned assets (diplomatic property, military property, and cultural property).

Violations of international law by Russia have justified the use of 'countermeasures' by other States, namely through sanctions against Russia.³⁴ Countermeasures are actions taken by other States in response to an internationally wrongful act with the aim of inducing the wrongfully-acting State to comply with its legal obligations.³⁵ Since countermeasures are intended to persuade the wrongful State to comply with its obligations, they are not intended to be punitive or permanent. Instead, countermeasures must be proportional, temporary, and

³² See above, page 15 (for discussion of Central Bank reserves).

³³ See above, page 5 (for definition of civil forfeiture).

³⁴ International Law Commission, Articles on the Responsibility of States for Internationally Wrongful Acts, art. 49.

³⁵ International Law Commission, Articles on the Responsibility of States for Internationally Wrongful Acts, art. 22 ("The wrongfulness of an act of a State not in conformity with an international obligation towards another State is precluded if and to the extent that the act constitutes a countermeasure taken against the latter State [. . .].").

reversible.³⁶ As a result, a seizure of assets owned by the Russian State for the purpose of Ukraine's recovery is challenging, as transferring the assets (or the value of the assets, if they are auctioned off) is likely to result in a permanent deprivation of the asset.

Permanently depriving Russia of its State-owned assets would go beyond the scope of a lawful countermeasure and this deprivation would require another legal justification. Identifying a legal justification to permanently and effectively deprive Russia of its frozen assets is difficult, since Russia has sovereign immunity under international law. Sovereign immunity plays an important role in international law and international relations, as it protects States and their officials from being subject to the jurisdiction of another State's courts or its enforcement measures.³⁷ Sovereign immunity includes both jurisdictional immunity and enforcement immunity.

Jurisdictional immunity protects sovereign States and their property from the jurisdiction of another State's courts.³⁸ In other words, it acts as a procedural bar to protect sovereign States from being made party to proceedings in another State's courts. Jurisdictional immunity is distinct from, but closely related to, head of State immunity and diplomatic and consular immunity, which exempt certain categories of officials of one State from the jurisdiction of another State's courts.³⁹ Head of State immunity and diplomatic and consular immunity are immunities that cover government officials by virtue of their official functions. By contrast, jurisdictional immunity applies to the foreign State as an independent legal personality.⁴⁰

³⁶ International Law Commission, Articles on the Responsibility of States for Internationally Wrongful Acts, art. 49(2) (providing that countermeasures should be temporary, as they should be "limited to the non-performance for the time being of international obligations of the State taking the measures towards the responsible State"); International Law Commission, Articles on the Responsibility of States for Internationally Wrongful Acts, art. 49(3) (providing that countermeasures should be reversible, as they should be, "taken in such a way as to permit the resumption of performance of the obligations in question.").

³⁷ Brookings Institution, *Sovereign Immunity: Past, Present, and Future*, (May 11, 2022), available at <https://www.brookings.edu/research/sovereign-immunity-past-present-and-future>.

³⁸ Peter-Tobias Stoll, *State Immunity*, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW, (last updated Apr. 2011), available at <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1106>, paras. 1, 4.

³⁹ Peter-Tobias Stoll, *State Immunity*, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW, (last updated Apr. 2011), paras. 13, 21; Vienna Convention on Diplomatic Relations, art. 31, *opened for signature* Apr. 18, 1961, 1964 U.N.T.S. 96 (*entered into force* Apr. 24, 1964); *see also id.*, art. 3(1) (defining diplomatic functions); *see also*, Vienna Convention on Consular Relations, art. 43, *opened for signature* Apr. 24, 1963, 596 U.N.T.S. 261 (*entered into force* Mar. 19, 1967); *see also id.*, art. 5 (defining consular functions).

⁴⁰ UN Convention on Jurisdictional Immunities of States and their Properties, art. 5, General Assembly Resolution 59/38, U.N. Doc. A/RES/59/38, annex (Dec. 16, 2004).

There are limited exceptions to jurisdictional immunity, including for commercial disputes;⁴¹ contracts of employment;⁴² the ownership and use of property;⁴³ operation of a commercial ship;⁴⁴ or where the State participates in companies or other collective bodies in the jurisdiction of another State.⁴⁵ There is also a limited exception for personal injuries, death, damage to property, or loss of property attributable to a foreign State (termed the “non-commercial tort exception”).⁴⁶ The non-commercial tort exception is unlikely to apply to Russia’s actions in Ukraine, since it has been found to be inapplicable where the injury, death, damage, or loss, was caused by a State’s armed forces.⁴⁷ However, there has been increasing interest in identifying whether the conduct of the Russian private military company, Wagner Group, may be attributed to that of the Russian State.⁴⁸

Jurisdictional immunity is directly relevant to any attempt to initiate court proceedings to seize State-owned assets for repurposing, since Russia would likely argue that any such proceedings are procedurally barred because it benefits from jurisdictional immunity. However, even if a State’s courts are able to overcome jurisdictional immunity and render a decision against Russia, seizing the assets will require enforcement of that decision. Enforcing a decision against Russia would be challenging, as it also benefits from enforcement immunity.

Enforcement immunity protects the property of a State from being subject to arrest,⁴⁹ attachment,⁵⁰ and execution by foreign courts.⁵¹ In other words, it acts as a barrier to prevent foreign court judgments from being enforced against a foreign

⁴¹ UN Convention on Jurisdictional Immunities of States and their Properties, art. 10.

⁴² UN Convention on Jurisdictional Immunities of States and their Properties, art. 11.

⁴³ UN Convention on Jurisdictional Immunities of States and their Properties, art. 13.

⁴⁴ UN Convention on Jurisdictional Immunities of States and their Properties, art. 16.

⁴⁵ UN Convention on Jurisdictional Immunities of States and their Properties, art. 15.

⁴⁶ UN Convention on Jurisdictional Immunities of States and their Properties, art. 12.

⁴⁷ *Jurisdictional Immunities of the State (Germany v. Italy: Greece Intervening)*, Judgment, 2012 I.C.J Reports, (Feb. 3, 2012), page 99, at pages. 134-135, para. 77.

⁴⁸ Winston Williams, Jennifer Maddocks, *Ukraine Symposium - The Wagner Group: Status and Accountability*, (Feb. 23, 2023), available at <https://lieber.westpoint.edu/wagner-group-status-accountability/>. See also Jennifer Maddocks, *Russia, the Wagner Group, and the Issue of Attribution*, Articles of War, (Apr. 28, 2021), available at <https://lieber.westpoint.edu/russia-wagner-group-attribution/>.

⁴⁹ Generally, the process of arrest involves property being detained by judicial process for the purpose of satisfying a future or present claim.

⁵⁰ Generally, attachment is a legal process where, at the request of a creditor, the court designates property owned by the debtor to be transferred to the creditor or sold for the creditor’s benefit.

⁵¹ Generally, execution refers to the process which takes place after a judgment has been entered, and where the court takes possession of property in order to sell the property and use the proceeds to pay a judgment in favor of the winning party, including proceeds that might be in the hands of a third party, such as in a commercial bank.

State. There are very limited exceptions to the application of enforcement immunity.⁵²

As States have taken steps to codify jurisdiction and enforcement immunity in their domestic legislation, they have incorporated different circumstances, clarifications, and exceptions to the application of each. For example, the United Kingdom recognizes immunity from jurisdiction and immunity from execution in its State Immunity Act (SIA).⁵³ The U.K. State Immunity Act largely overlaps with customary international law, noting that a State will not be immune in a number of circumstances, including where the State has agreed to the jurisdiction of a U.K. court,⁵⁴ the State is involved in commercial activity,⁵⁵ the State committed a non-commercial tort,⁵⁶ or proceedings related to a State's interest, possession, or use of property.⁵⁷ The U.K. State Immunity Act, along with its U.S. and Canadian counterparts, also provides that the assets of Central Banks benefit from enforcement immunity.⁵⁸

Domestic laws on sovereign immunity are important to understand in order to develop legislation to legally repurpose frozen Russian assets. For example, in May 2022, Canada made a series of amendments to allow for the seizure and transfer of frozen Russian assets. The amended legislation notes that it may apply to the assets owned by a foreign State.⁵⁹ However, since Canada's State Immunity Act recognizes the sovereign immunity of foreign States, such as Russia,⁶⁰ steps to seize assets of the Russian State are unlikely to succeed unless an exception to immunity under Canada's State Immunity Act can be established.

⁵² *Jurisdictional Immunities of the State (Germany v. Italy: Greece Intervening)*, Judgment, 2012 I.C.J. Reports, (Feb. 3, 2012), p. 99, at pages 146-147, para. 118.

⁵³ State Immunity Act 1978, U.K. Public General Acts 1978, c. 33 section 14 (3) available at <https://www.legislation.gov.uk/ukpga/1978/33/>.

⁵⁴ State Immunity Act 1978, U.K. Public General Acts 1978, c. 33 section 2 available at <https://www.legislation.gov.uk/ukpga/1978/33/>.

⁵⁵ State Immunity Act 1978, U.K. Public General Acts 1978, c. 33 section 3 available at <https://www.legislation.gov.uk/ukpga/1978/33/>.

⁵⁶ State Immunity Act 1978, U.K. Public General Acts 1978, c. 33 section 5 available at <https://www.legislation.gov.uk/ukpga/1978/33/>.

⁵⁷ State Immunity Act 1978, U.K. Public General Acts 1978, c. 33 section 6 available at <https://www.legislation.gov.uk/ukpga/1978/33/>.

⁵⁸ State Immunity Act 1978, U.K. Public General Acts 1978, c. 33 section 14 (3) available at <https://www.legislation.gov.uk/ukpga/1978/33/section/14>; 28 U.S Code section 1611; State Immunity Act, RSC 1985, c S-18, art. 12(4) available at <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-s-18/latest/rsc-1985-c-s-18.html>.

⁵⁹ Special Economic Measures Act, SC 1992, c 17 section 4 (1) available at <https://www.canlii.org/en/ca/laws/stat/sc-1992-c-17/latest/sc-1992-c-17.html>.

⁶⁰ State Immunity Act, RSC 1985, c S-18, art. 6.1 available at <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-s-18/latest/rsc-1985-c-s-18.html>.

In addition to more typical exceptions to sovereign immunity, the United States and Canada have an exception to sovereign immunity under which the government may choose to designate a State as a State sponsor of terrorism.⁶¹ This exception allows a foreign State to be sanctioned for committing or supporting acts of terrorism.⁶² The United States currently designates four States as a State sponsor of terrorism: Cuba, North Korea, Iran, and Syria.⁶³ Canada designates only two, Iran and Syria.⁶⁴ A number of international actors, including the European Parliament, have voiced interest in creating an exception to sovereign immunity for State sponsors of terrorism in States other than the United States and Canada, and then designating Russia a State sponsor of terrorism.⁶⁵ For the United States, there is also the consideration that designating Russia as a sponsor of terrorism would trigger a wide range of sanctions. This includes widespread financial and commercial restrictions on both the designated State sponsor of terrorism and restrictions on persons and other States engaging in trade with a designated State.⁶⁶

In general, creating or invoking the State sponsor of terrorism exception does not ensure Ukraine will receive currently frozen Russian assets or funds from such assets. Removing Russia's sovereign immunity would allow Russia to be freely sued in domestic courts. While this opens the potential for lawsuits by individuals and entities who have been harmed by Russia's actions, it does not guarantee that any frozen Russian assets recovered in these lawsuits would be directed to Ukraine. For example, a U.S. company that was previously operating in Russia, but suffered loss as a result of Russia's actions, may sue for damages and

⁶¹ 28 U.S. Code section 1605A; State Immunity Act, RSC 1985, c S-18, Sections 6(1), 12(1), *available at* <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-s-18/latest/rsc-1985-c-s-18.html>.

⁶² 28 U.S. Code section 1605A(h)(6) (“[T]he term ‘state sponsor of terrorism’ means a country the government of which the Secretary of State has determined [. . .] is a government that has repeatedly provided support for acts of international terrorism”); State Immunity Act, RSC 1985, c S-18, section 6.1, *available at* <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-s-18/latest/rsc-1985-c-s-18.html> (“For the purposes of this Act, a foreign state supports terrorism if it commits, for the benefit of or otherwise in relation to a listed entity as defined in [the Canadian Criminal Code sections on terrorism], an act or omission that is, or had it been committed in Canada would be, punishable under any of [the Canadian Criminal Code sections on the financing of terrorism]”).

⁶³ U.S. Department of State, *State Sponsors of Terrorism*, *available at* <https://www.state.gov/state-sponsors-of-terrorism>.

⁶⁴ Order Establishing a List of Foreign State Supporters of Terrorism, SOR/2012-170, *available at* <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2012-170/FullText.html>.

⁶⁵ European Parliament, *European Parliament Declares Russia to be a State Sponsor of Terrorism* (Nov. 11, 2022), *available at* <https://www.europarl.europa.eu/news/en/press-room/20221118IPR55707/european-parliament-declares-russia-to-be-a-state-sponsor-of-terrorism>.

⁶⁶ U.S. Department of State, *State Sponsors of Terrorism*, *available at* <https://www.state.gov/state-sponsors-of-terrorism>.

the resulting funds would be directed to that U.S. company, rather than to Ukraine.⁶⁷

Central Bank reserves

It will be very difficult to seize Central Bank reserves under international and domestic law, as they are afforded a high degree of protection under both jurisdictional and enforcement immunity. Under international law, the property of a Central Bank is unlikely to fall within an exception to sovereign immunity, as it is always treated as property used for governmental, non-commercial purposes.⁶⁸ In addition to the international law protections related to sovereign immunity, certain States also provide protection to Central Bank reserves under their domestic laws.⁶⁹

Other Russian State-owned assets

Other Russian State-owned assets are also protected by both jurisdiction and enforcement immunity. This includes diplomatic property, military property, and cultural property.

Diplomatic property is movable and immovable property belonging to a foreign diplomatic or consular mission. This includes embassy buildings, other buildings used for the mission and by embassy staff, and embassy bank accounts. These properties are afforded a high degree of protection under international law, including protections under diplomatic law (for example, the Vienna Convention on Diplomatic Relations) and sovereign immunity.⁷⁰ As a result, regardless of changes to domestic legislation, any steps taken to enforce a decision against Russia by seizing diplomatic property overseas would very likely violate international law.⁷¹

Military property is similarly entitled to a high degree of protection. Military property includes warships and military aircrafts. Military property is unlikely to

⁶⁷ Brookings Institute, *State Sponsor of Terrorism Designations*, (Dec. 29, 2022), available at <https://www.brookings.edu/research/state-sponsor-of-terrorism-designations>.

⁶⁸ UN Convention on Jurisdictional Immunities of States and their Properties, art. 21.

⁶⁹ State Immunity Act 1978, U.K. Public General Acts 1978, c. 33 section 14 (3) available at <https://www.legislation.gov.uk/ukpga/1978/33/section/14>; 28 U.S Code section 1611; State Immunity Act, RSC 1985, c S-18, art. 12(4), available at <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-s-18/latest/rsc-1985-c-s-18.html>.

⁷⁰ Cedric Ryngaert, *Immunity from Execution and Diplomatic Property*, in CAMBRIDGE HANDBOOK OF IMMUNITIES AND INTERNATIONAL LAW, Cambridge University Press, (2019), pages 564-565.

⁷¹ Cedric Ryngaert, *Immunity from Execution and Diplomatic Property*, in CAMBRIDGE HANDBOOK OF IMMUNITIES AND INTERNATIONAL LAW, Cambridge University Press, (2019), pages 564-565.

fall under any of the exceptions to the application of sovereign immunity, since it is typically presumed to be used for governmental purposes.⁷²

State cultural property is property forming part of the cultural heritage of the State or its archives; and property forming part of an exhibition of scientific, cultural, or historic interest.⁷³ While State cultural property is entitled to sovereign immunity protection, there have been historical examples where State cultural property was provided to a party enforcing a successful decision made against the Russian State. For example, in a 2005 Swiss litigation, a Swiss company that had won a decision against Russia obtained fifty-four paintings owned by the Russian State that were on loan to Switzerland.⁷⁴ However, this approach is likely to be more limited in the present, as many States (including the United States, United Kingdom, and Germany), have since adopted domestic legislation to protect State cultural property from enforcement proceedings.⁷⁵

Assets of Russian State-owned enterprises

Repurposing the assets of a Russian State-owned enterprise will generally depend on whether that enterprise has itself committed an unlawful act in Ukraine that justifies repurposing. A State-owned enterprise is an entity that is owned, managed, or controlled by a State (for example, Gazprom, Sberbank, and Transneft). Assets owned by State-owned enterprises differ from other State-owned assets. State-owned enterprises are considered to have a distinct legal personality from the State,⁷⁶ making them liable for their own actions. State-owned enterprises cannot be held liable for the actions of the State, but also are not afforded the same level of sovereign immunity as a State.⁷⁷

As a principle of international law, the property of a State-owned enterprise is not entitled to immunity from jurisdiction.⁷⁸ This is significant since Russia's

⁷² UN Convention on Jurisdictional Immunities of States and their Properties, art. 21.

⁷³ UN Convention on Jurisdictional Immunities of States and their Properties, art. 21 (d).

⁷⁴ Matthew Happold, *Immunity from Execution of Military and Cultural Property*, in CAMBRIDGE HANDBOOK OF IMMUNITIES AND INTERNATIONAL LAW, Cambridge University Press, (2019), page 616.

⁷⁵ The following countries have now adopted anti-seizure laws that would prevent this type of enforcement: United States, Australia, France, Ireland, Germany, Austria, Belgium, Switzerland, Israel and the United Kingdom. See Cedric Ryngaert, *Immunity from Execution and Diplomatic Property*, in CAMBRIDGE HANDBOOK OF IMMUNITIES AND INTERNATIONAL LAW, Cambridge University Press, (2019), pages 564-565.

⁷⁶ See UN Convention on Jurisdictional Immunities of States and Their Property, art. 10(3); European Convention on State Immunity, art. 27.

⁷⁷ See UN Convention on Jurisdictional Immunities of States and Their Property, art. 10(3); European Convention on State Immunity, art. 27.

⁷⁸ The UN Convention on Jurisdictional Immunities of States and Their Property provides that where a state enterprise is capable of being sued and suing, and acquiring, owning or disposing of property, and is involved in

State-owned enterprises will not benefit from jurisdictional immunity in proceedings brought against them in foreign courts.

The assets of State-owned enterprises are also generally not protected by enforcement immunity. As a result, a decision against a Russian State-owned enterprise would generally be enforceable. In the same vein, since a State-owned enterprise is considered to have an independent personality from the Russian State, a decision against Russia could not be enforced against that enterprise. Generally, the vulnerability to enforcement in foreign courts stems not from the absence of sovereign immunity protection, but rather the separate question of whether the enterprise is liable and is the holder of the assets.⁷⁹

Repurposing assets of State-owned enterprises in Russia will require a causal link to be drawn between the liability of State-owned enterprises and Russia's actions in Ukraine. In certain cases, there may be the potential to sue Russian State-owned enterprises for their complicity in Russia's crimes against humanity. For example, the French industrial company Lafarge is facing charges of complicity for crimes against humanity in France over alleged payoffs made to the Islamic State and other groups.⁸⁰ The complicity of corporations in international crimes is an emerging area of international human rights law and it remains to be seen whether it may be a viable option.

Repurposing assets of Russian nationals and private companies

A large number of Russian nationals and private companies have also been sanctioned following the most recent phase of Russia's invasion of Ukraine. There is a relatively greater legal potential to repurpose these assets, but certain challenges will need to be overcome to do so at a large scale or in a sufficiently rapid manner. Although the political momentum for these sanctions was grounded in Russia's invasion of Ukraine, the legal basis for these sanctions is not grounded not only in Russia's actions, but also in violations of existing export control, trade,

proceedings concerning a commercial transaction, the State-owned enterprise will not be entitled to immunity from jurisdiction. See UN Convention on Jurisdictional Immunities of States and Their Property, art. 10(3).

⁷⁹ In a leading U.S. Supreme Court case on piercing the veil of a State-owned enterprise, the Supreme Court held that while there exists a strong presumption that State-owned enterprises will have separate legal identity, a foreign State can be liable for actions performed by a State-owned entity is "so extensively controlled by its owner that a relationship of principal and agent is created" or when to blindly recognize separate legal status "would work fraud or injustice." See *First National City Bank v Banco Para El Comercio Exterior de Cuba (Bancec)*, 103 S. Ct. 2591 (1983)..

⁸⁰ *Lafarge Lawsuit (re complicity in crimes against humanity in Syria)*, BUSINESS & HUMAN RIGHTS RESOURCE CENTRE, available at <https://www.business-humanrights.org/en/latest-news/lafarge-lawsuit-re-complicity-in-crimes-against-humanity-in-syria/> (last visited Mar. 17, 2023).

sanctions, and racketeering laws.⁸¹ As with assets owned by the Russian State, existing sanctions regimes are primarily designed to freeze (or ‘block’ in U.S. parlance) these assets, not repurpose them. Yet, unlike assets of the Russian State, assets of individual Russian nationals and private companies are not protected by sovereign immunity.

Many States, including member States of the European Union, the United States, and Canada, have domestic legislation that allows that State to change the ownership of an asset linked to a crime or criminal activity by requiring the original owner to forfeit their ownership of that asset.⁸²

These forfeiture mechanisms are already being used to repurpose assets of sanctioned Russian nationals and private companies.⁸³ Since February 2022, forfeiture laws have formed the basis for the United States to take steps to seize over \$1 billion (USD) worth of frozen assets.⁸⁴ In each of these cases, the authorities must take steps to identify the asset, trace its owner, and establish that either the asset or its owner is linked to a criminal activity.⁸⁵ For example, two jets owned by a Russian oligarch, Roman Abramovich, were seized for violating the 2018 U.S. Export Control Reform Act, on the basis that the planes flew to Russia without export control waivers from the U.S. Department of Commerce.⁸⁶

⁸¹ Blocking Property With Respect to Specified Harmful Foreign Activities of the Government of the Russian Federation (Executive Order No. 14024), Federal Register, Vol. 86, No. 73, (Apr. 19, 2021), *available at* <https://home.treasury.gov/system/files/126/14024.pdf>. *See also* The White House, *FACT SHEET: Imposing Costs for Harmful Foreign Activities by the Russian Government*, (Apr. 15, 2021), *available at* <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/15/fact-sheet-imposing-costs-for-harmful-foreign-activities-by-the-russian-government/>.

⁸² For example, the European Union’s Confiscation Directive allows a State to seize an asset if: the seized asset gave rise to financial gain for the crime and is linked to the specific crime for which a person has been convicted; criminal proceedings were initiated but unable to continue (for instance, if the accused fell ill or is missing) and the continuation of proceedings would have resulted in a conviction; the assets are derived from criminal conduct; and it is necessary to prevent a suspected or accused person from directly or indirectly transferring property to a third party to avoid seizure. *See* Directive 2014/42/E.U. Of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, (Apr. 3, 2014), *available at* <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0042&from=EN>.

⁸³ On February 3, 2023, the United States made the first ever transfer of frozen assets of a Russian national to Ukraine. The U.S. Attorney General stated that the funds would be transferred to be spent “in support of the people of Ukraine.” *See* Radio Free Europe, *U.S. Attorney General Allows First Transfer of Russian Oligarch’s Confiscated Assets to Ukraine*, (Feb. 4, 2023), *available at* <https://www.rferl.org/a/ukraine-russia-malofeyev-transfer/32255371.html>.

⁸⁴ Brit McCandless Farmer, *How U.S. Prosecutors seize sanctioned Russian assets*, CBS News (Jan. 15, 2023) *available at* <https://www.cbsnews.com/news/russian-asset-seizure-60-minutes-2023-01-15/>.

⁸⁵ There is a distinction between civil and criminal forfeiture mechanisms. A civil forfeiture mechanism is brought against the asset. A criminal forfeiture mechanism is brought against the alleged criminal actor. *See above*, page 5 (for definition of criminal forfeiture).

⁸⁶ Jack Queen, *U.S. Cleared To Seize Russian Oligarch’s Jets Worth \$400M*, LAW 360, (June 6, 2022) *available at* <https://www.law360.com/articles/1500094/us-cleared-to-seize-russian-oligarch-s-jets-worth-400m>.

Since the asset must be linked to criminal activity, the repurposing of assets is limited by what domestic legislation designates to be a crime.⁸⁷ Designating the evasion of sanctions as a crime can help streamline the repurposing of the assets of Russian nationals and private companies. For example, the United States has used this justification to seize a yacht of a Russian oligarch, Viktor Vekselberg, on the basis that the oligarch had committed bank fraud by depriving lenders of the opportunity to comply with sanctions lists by hiding his assets in shell companies; and violated U.S. sanctions law by hiding his stake in the yacht and using U.S. bank accounts to maintain the yacht.⁸⁸

As a result of sanctioned Russian nationals taking steps to hide their assets or otherwise evade sanctions prohibitions, many States have taken the steps to make the evasion of sanctions a crime in itself. In 2022, Germany amended its Sanctions Enforcement Act to allow for the prosecution of any sanctioned person who fails to declare their assets in Germany to the German authorities.⁸⁹ In March 2022, U.K. lawmakers introduced the Economic Crime Act.⁹⁰ This law gives authorities additional powers regarding sanction evasion,⁹¹ allows the government to levy civil penalties on a strict liability basis against parties violating U.K. sanctions after June 15, 2022,⁹² and allows for the creation of a register that will show ownership of valuable assets in the United Kingdom.⁹³ In December 2022,

⁸⁷ Paul B. Stephan, *Seizing Russian Assets*, 17 CAPITAL MARKETS LAW JOURNAL 276, 282 (2022) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4129862.

⁸⁸ Richard Crump, *The U.K. Has Frozen £500B In Russian Assets. Now What?* LAWFARE, (Sept. 21, 2022), available at <https://www.law360.com/articles/1532000>.

⁸⁹ Munich public prosecutor's office seized three apartments and a bank account belonging to a Duma deputy. Because he is on the E.U. sanctions list, he was no longer allowed to rent out the apartments. The Duma deputy can lose ownership of the apartments to the German state if the courts confirm the sanctions violation. See Deutsche Welles, *Germany seizes Russian property under sanctions*, (June 20, 2022), available at <https://www.dw.com/en/germany-seizes-first-russian-owned-property-under-sanctions/a-62191796>; see also Bundesministerium der Finanzen, *Federal Cabinet adopts Sanctions Enforcement Act II*, (Oct. 10, 2022), available at <https://www.bmwk.de/Redaktion/EN/Pressemitteilungen/2022/10/20221026-federal-cabinet-adopts-sanctions-enforcement-act-ii.html>.

⁹⁰ Federal Act on the Implementation of International Sanctions, available at <https://www.legislation.gov.uk/ukpga/2022/10/introduction/enacted>.

⁹¹ Richard Crump, *The U.K. Has Frozen £500B In Russian Assets. Now What?* LAWFARE, (Sept. 21, 2022), available at <https://www.law360.com/articles/1532000>.

⁹² Michael S. Casey, Tarek J. Helou, Tim Broas, *Enforcement of Russian Sanctions and Export Controls Is Coming*, WILSON SONSINI, (Sept. 15, 2022), available at <https://www.wsgr.com/en/insights/enforcement-of-russian-sanctions-and-export-controls-is-coming.html>

⁹³ Richard Crump, *The U.K. Has Frozen £500B In Russian Assets. Now What?*, LAWFARE, (Sept. 21, 2022), available at <https://www.law360.com/articles/1532000>.

the E.U. proposed that all of its member States harmonize and take a uniform approach to criminalizing the evasion of sanctions.⁹⁴

In May 2022, Canada amended its Special Economic Measures Act (“SEMA”) to provide new powers to seize and sell off assets owned by sanctioned individuals and entities.⁹⁵ Under these new changes, SEMA allows for an asset to be seized if a “grave breach of international peace and security has occurred that has resulted in or is likely to result in a serious international crisis,”⁹⁶ an element that would unequivocally apply to Russia’s war in Ukraine. In order to repurpose, the first step being seizure, property must either be owned by a sanctioned person or a foreign state.⁹⁷ On this basis, once a property has been frozen, it could be seized, a Canadian court will hear a forfeiture application, and if successful, an asset can be repurposed, for example for the reconstruction of a foreign State.⁹⁸ Although SEMA notes that it may apply to the assets owned by a foreign State,⁹⁹ it is unlikely that it will be used to repurpose assets other than those owned by Russian nationals and private companies, since Canada’s State Immunity Act recognizes Russia’s sovereign immunity.¹⁰⁰

Concurrent with its amendments to SEMA, Canada also amended its Justice for Victims of Corrupt Foreign Officials Act (“Magnitsky Act”).¹⁰¹ The Magnitsky Act allows for the Canadian government to seize and restrain property of a foreign

⁹⁴ Ella Joyner, *E.U. aims to use Russian assets to generate cash for Ukraine*, Deutsche Welle, (Dec. 2, 2022), available at <https://www.dw.com/en/eu-aims-to-use-russian-assets-to-generate-cash-for-ukraine/a-63971548>.

⁹⁵ Janyce McGregor, *Canada can now seize, sell off Russian assets. What's next?*, CBC, (June 27, 2022) available at <https://www.cbc.ca/news/politics/c19-russia-sanctions-asset-seizures-test-case-1.6496047>; Janyce McGregor, *Proposed powers to sell, redistribute Russian assets may violate international law, says legal expert*, CBC, (June 6, 2022) available at

<https://www.cbc.ca/news/politics/c19-russia-sanctions-un-articles-violation-1.6478115>.

⁹⁶ Special Economic Measures Act, SC 1992, c 17 section 4 (1.1) available at

<https://www.canlii.org/en/ca/laws/stat/sc-1992-c-17/latest/sc-1992-c-17.html>.

⁹⁷ SEMA states that once an asset is seized, it may be used for “the reconstruction of a foreign state adversely affected by a grave breach of international peace and security; [...] the restoration of international peace and security; and [...] the compensation of victims of a grave breach of international peace and security, gross and systematic human rights violations or acts of significant corruption.” See Special Economic Measures Act, SC 1992, c 17, section 5(6), available at <https://www.canlii.org/en/ca/laws/stat/sc-1992-c-17/latest/sc-1992-c-17.html>.

⁹⁸ SEMA states that once an asset is seized, it may be used for “the reconstruction of a foreign state adversely affected by a grave breach of international peace and security; [...] the restoration of international peace and security; and [...] the compensation of victims of a grave breach of international peace and security, gross and systematic human rights violations or acts of significant corruption.” See Special Economic Measures Act, SC 1992, c 17, section 5(6), available at <https://www.canlii.org/en/ca/laws/stat/sc-1992-c-17/latest/sc-1992-c-17.html>.

⁹⁹ Special Economic Measures Act, SC 1992, c 17 section 4 (1) available at <https://www.canlii.org/en/ca/laws/stat/sc-1992-c-17/latest/sc-1992-c-17.html>.

¹⁰⁰ State Immunity Act, RSC 1985, c S-18, art. 6.1 available at <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-s-18/latest/rsc-1985-c-s-18.html>.

¹⁰¹ Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law), SC 2017, c 21, sections 4(1)-4(2), available at <https://www.canlii.org/en/ca/laws/stat/sc-2017-c--21/latest/sc-2017-c--21>.

national, if that foreign national: (i) “is responsible for or complicit” in gross violations of human rights or (ii) has committed an act of corruption.¹⁰² The Magnitsky Act now also includes provisions that would allow for the repurposing of assets by paying proceeds to victims of gross violations of internationally recognized human rights,¹⁰³ which would unequivocally apply to Russia’s war in Ukraine. The Canadian model has attracted interest from other States. In February 2023, Estonia voiced interest in following the Canadian model to repurpose frozen Russian assets.¹⁰⁴

As States take steps to seize assets for repurposing, existing legislation may need to be updated to streamline the repurposing process. For example, in December 2022, the United States amended its Consolidated Appropriations Act to allow its Attorney General to pursue forfeiture of certain Russian assets and transfer proceeds to Ukraine as foreign assistance.¹⁰⁵ Similarly, Canada’s amendments to SEMA, the Magnitsky Act, and related amendments to its *Seized Property Management Act* provide a basis for seized assets to be used for reconstruction efforts or provide compensation to victims.¹⁰⁶

Although welcomed, these mechanisms to seize and repurpose frozen assets of Russian nationals and private companies still face challenges. Regardless of the mechanism, there is a likelihood and a variety of bases for individuals and private companies to appeal and litigate steps taken to repurpose their assets under current domestic and international law.

Domestically, individuals and private companies may rely on domestic property rights to launch lengthy appeals or altogether prevent the repurposing of their assets. For example, in Switzerland, the Swiss Federal Office of Justice has advised the Swiss Federal Council that confiscating private Russian assets would

¹⁰² Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law), SC 2017, c 21, sections 4(1)–4(4) available at <https://www.canlii.org/en/ca/laws/stat/sc-2017-c--21/latest/sc-2017-c--21.html>.

¹⁰³ Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law), SC 2017, c 21, section 4.4, available at <https://www.canlii.org/en/ca/laws/stat/sc-2017-c--21/latest/sc-2017-c--21.html>.

¹⁰⁴ See, for example, ERR, *In confiscating frozen Russian assets, Estonia may follow Canadian example*, (Feb. 2, 2023), available at <https://news.err.ee/1608872648/in-confiscating-frozen-russian-assets-estonia-may-follow-canadian-example>.

¹⁰⁵ National Review, *U.S. to Fund Ukraine Reconstruction Using the Seized Assets of Russian Oligarchs*, (Dec. 23, 2022), available at <https://www.nationalreview.com/corner/u-s-to-fund-ukraine-reconstruction-using-the-seized-assets-of-russian-oligarchs/>.

¹⁰⁶ Special Economic Measures Act, SC 1992, c 17, section 5.6, available at <https://www.canlii.org/en/ca/laws/stat/sc-1992-c-17/latest/sc-1992-c-17.html>; Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law), SC 2017, c 21, section 4.4, available at <https://www.canlii.org/en/ca/laws/stat/sc-2017-c--21/latest/sc-2017-c--21.html>; Seized Property Management Act, SC 1993, c 37, available at <https://laws.justice.gc.ca/eng/acts/S-8.3/>.

undermine the Swiss constitution and prevailing legal order.¹⁰⁷ In the United States, U.S. constitutional protections against the taking of property without compensation and civil forfeiture in the absence of due process may increase the potential for owners of seized assets to raise claims and bring lengthy appeals after seizure in U.S. courts.¹⁰⁸ However, depending on the amount at issue, certain owners may choose not to appeal U.S. forfeiture orders out of concern that doing so might expose them to the document discovery processes of U.S. courts relating to the alleged underlying offense.

Internationally, customary international law bars States from taking foreign property from its original owners without adequate compensation.¹⁰⁹ Bilateral investment treaties also provide similar protections.¹¹⁰ German law may allow for a Russian company to be placed under a forced trusteeship if it operates critical infrastructures (e.g., critical energy infrastructure relating to the supply of gas) and there is a risk that the company will otherwise fail to fulfill its tasks relevant to the public interest.¹¹¹ Yet doing so may also entitle that company to compensation under German law¹¹² or provide a basis for that company to raise a claim under the Germany-Russia bilateral investment treaty.¹¹³ Similarly, Canada also has a bilateral investment treaty with Russia.¹¹⁴ This treaty provides protections for investors against the taking of property without compensation and provides for the

¹⁰⁷ The Federal Council of Switzerland, *Federal Council has received legal clarifications on frozen Russian assets*, (Feb. 15, 2023), available at

www.admin.ch/gov/en/start/documentation/media-releases/media-releases-federal-council.msg-id-93089.html.

¹⁰⁸ Paul B. Stephan, *Seizing Russian Assets*, 17 CAPITAL MARKETS LAW JOURNAL, (2022) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4129862, page 278. See also U.S. Senate Judiciary Committee, *Questions for the Record from Senator Charles E. Grassley for Paul Stephan, University of Virginia School of Law School*, (July 19, 2022) available at

<https://www.judiciary.senate.gov/imo/media/doc/QFR%20Responses%20-%20Stephan%20-%202022-07-19.pdf>

(“In the absence of an armed conflict (a term that covers more than a state of war under art. I, Section 8, Clause 11 of the Constitution, but still has clear limits), I believe the Due Process Clause requires a clear legal statement, in advance of any confiscation, of the connection between the property and proscribed activity that would provide grounds for confiscation”).

¹⁰⁹ Robert Jennings and Arthur Watts, OPPENHEIM’S INTERNATIONAL LAW, (9th ed, 1992, pages. 916-917.

¹¹⁰ List of Russia BITs available at

<https://investmentpolicy.unctad.org/international-investment-agreements/countries/175/russian-federation>.

¹¹¹ German Energy Security Act (“EnSiG”), Section 17(1).

¹¹² Foreign legal entities under private law or domestic legal entities controlled by a foreign state are excluded from any compensation, irrespective of the intensity of the impairment of property resulting from the trusteeship.

¹¹³ However, art. 4 (5) of the Germany-Russia BIT provides for a relativization of the compensation obligation for (indirect) expropriations in addition to “war” and “armed conflicts” also for “other exceptional situations.” The current conflict between Russia and Ukraine can be interpreted as another exceptional situation. Further, the concept of contributory fault under international law could reduce the damages owed.

¹¹⁴ Canada-Russia BIT, available at

<https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/632/download>.

fair and equitable treatment of foreign investors.¹¹⁵ If Canada seizes and repurposes Russian assets protected by this treaty, it may face legal claims from Russian owners on the basis that their rights as a foreign investor have been violated.

Although there is a greater potential to repurpose assets of individuals and private companies relative to frozen Russian State-owned assets, these assets remain a small portion of the frozen Russian assets. Nevertheless, these measures can also form a part of a larger strategy to fund Ukraine's recovery efforts and incentivize Russian nationals and private companies who have their assets seized to pressure the Russian government to stop Russia's war.

Efforts to overcome legal barriers to repurposing frozen Russian assets

There is sustained interest by States and the international community to develop domestic and international law mechanisms to hold Russia accountable for the damage it has done in Ukraine. Such interest has already begun to prompt the development of legal mechanisms to allow for repurposing of some Russian assets to occur, particularly regarding the assets of private individuals and companies. As new legislation emerges and law develops, efforts are likely to focus solutions on addressing or overcoming the legal challenges outlined above. Doing so will be critical to the success of such efforts to repurpose a wider *range* of Russian frozen assets.

Canada's amendments to SEMA and its Magnitsky Act are representative of the political efforts to develop legal mechanisms to repurpose frozen Russian assets.¹¹⁶ As explained above, Canada's amendment of SEMA in May 2022 provided new powers to seize and sell off assets owned by sanctioned individuals and entities.¹¹⁷ While SEMA appears to provide a mechanism for frozen Russian assets, including those that are State-owned, to be repurposed,¹¹⁸ it is silent on whether Canada will exclude Russia from sovereign immunity protections. For this reason, it remains to be seen whether its full potential to repurpose State-owned assets will be realized and if Canada will overcome its legislation recognizing the

¹¹⁵ Canada-Russia BIT, arts. III, VI, *available at*

<https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/632/download>.

¹¹⁶ *See above*, pages 20-21.

¹¹⁷ Janyce McGregor, *Canada can now seize, sell off Russian assets. What's next?*, CBC, (June 27, 2022) *available at* <https://www.cbc.ca/news/politics/c19-russia-sanctions-asset-seizures-test-case-1.6496047>; Janyce McGregor, *Proposed powers to sell, redistribute Russian assets may violate international law, says legal expert*, CBC, (June 6, 2022) *available at*

<https://www.cbc.ca/news/politics/c19-russia-sanctions-un-articles-violation-1.6478115>.

¹¹⁸ Special Economic Measures Act, SC 1992, c 17, section 5.6, *available at* <https://www.canlii.org/en/ca/laws/stat/sc-1992-c-17/latest/sc-1992-c-17.html>.

sovereign immunity of other States.¹¹⁹ Nevertheless, the law illustrates the type of legislation that could allow for the repurposing of frozen Russian assets. As noted above, Estonia has voiced interest in following the Canadian model to repurpose frozen Russian assets.¹²⁰

In the United States, the most recent session of Congress, which ended in 2022, included at least a dozen legislative proposals to allow for the repurposing of frozen Russian assets.¹²¹ The proposed Russian Elites, Proxies, and Oligarchs Act of 2022 included bipartisan sponsors and was designed to provide the President of the United States with the authority to confiscate frozen Russian assets including sovereign assets such as: Central Bank reserves, funds of the Russian Direct Investment Fund, and any sovereign funds held in Russian government bank accounts.¹²² Once confiscated, the Secretary of State would have the power to send confiscated assets to Ukraine.¹²³ Though the proposal had bipartisan sponsors, it was not brought to a floor vote during Congress' previous session and has not yet been reintroduced.

Another U.S. legislative proposal suggests that Russian government funds could be confiscated “as the President determines appropriate” and then deposited into a general fund of the U.S. Treasury to offset any amounts that the United States provides as assistance to Ukraine.¹²⁴ This proposal was read twice in Congress and was referred to the Committee on Banking, Housing, and Urban

¹¹⁹ State Immunity Act, RSC 1985, c S-18, art. 6.1, available at <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-s-18/latest/rsc-1985-c-s-18.html>.

¹²⁰ See, for example, ERR, *In confiscating frozen Russian assets, Estonia may follow Canadian example*, (Feb. 2, 2023), available at

<https://news.err.ee/1608872648/in-confiscating-frozen-russian-assets-estonia-may-follow-canadian-example>.

¹²¹ See Asset Seizure for Ukraine Reconstruction Act, section 2(1), H.R. 6930, 117th Congress (Apr. 28, 2022); Asset Seizure for Ukraine Reconstruction Act, S. 3838, 117th Congress (2022); Oligarch Asset Forfeiture Act, H.R. 7086, 117th Congress (2022); Make Russia Pay Act, H.R. 7083, 117th Congress (2022); Repurposing Elite Luxuries into Emergency Funds for Ukraine Act, H.R. 7596, 117th Congress (2022); Yachts for Ukraine Act, H.R. 7187, 117th Congress (2022); Ukrainian Sovereignty Act, H.R. 7205, 117th Congress (2022); Confiscating Corrupt Criminal Proceeds Act of 2022, H.R. 7015, 117th Congress (2022); Asset Seizure for Ukrainian Reconstruction Act, S.A. 6392, 117th Congress (2022); Repurposing Elite Luxuries Into Emergency Funds for Ukraine Act, S. 3936, 117th Congress (2022); A bill to authorize the confiscation of assets of the Russian Federation and the use of such assets to offset costs to the United States of assistance to Ukraine, S. 4283, 117th Congress (2022); Special Russian Sanctions Authority Act of 2022, S. 3723, 117th Congress (2022). See also Evan J. Criddle, *Turning Sanctions into Reparations; Lessons for Russia/Ukraine*, Harvard International Law Journal, (Jan. 2023), available at <https://harvardilj.org/2023/01/turning-sanctions-into-reparations-lessons-for-russia-ukraine/>.

¹²² Senate Amendment 6379 to Senate Amendment 5499 (Russian Elites, Proxies, and Oligarchs Act of 2022), (Sept. 29, 2022), available at <https://www.congress.gov/amendment/117th-congress/senate-amendment/6379>.

¹²³ Senate Amendment 6379 to Senate Amendment 5499 (Russian Elites, Proxies, and Oligarchs Act of 2022), (Sept. 29, 2022), available at <https://www.congress.gov/amendment/117th-congress/senate-amendment/6379>.

¹²⁴ A bill to authorize the confiscation of assets of the Russian Federation and the use of such assets to offset costs to the United States of assistance to Ukraine (S. 4283), (May 19, 2022), available at <https://www.congress.gov/bill/117th-congress/senate-bill/4283>.

Affairs; it has not yet been reintroduced for a floor vote.¹²⁵ These and other recent legislative proposals are reflective of the continuing interest in the United States to develop legislative mechanisms to allow for repurposing.

These active and rapidly developing legislative initiatives are widely welcomed. However, as highlighted by the Canadian legislative developments, efforts to repurpose assets under these amended and proposed laws will likely require further steps to address sovereign immunity, which may otherwise limit the effect of such legislation.

Important parliamentary groups, such as the informal United Kingdom All-Party Parliamentary Group on Anti-Corruption & Responsible Tax,¹²⁶ have called for legislation to overcome sovereign immunity. Specifically, the All-Party Parliamentary Group highlighted that there was a need for primary legislation that would allow for the recovery of State-owned assets, and that such legislation “could be enacted if there was political will to do so.”¹²⁷

International approaches have also been put forward. The European Commission has suggested creating a structure to invest the frozen Russian assets and use the proceeds from the investment (i.e., the return on investment) to fund Ukraine’s recovery.¹²⁸ While this approach is not possible under the domestic laws of all jurisdictions, it is unlikely that it would violate international law and a positive return on investment would grow the pool of funds available to fund Ukraine’s recovery.

Russia’s war in Ukraine may lead to the development of rules and doctrines of customary international law that allow for the repurposing of frozen Russian assets. Commentators have noted that this type of paradigm shifting has been seen throughout the history of international law in response to the urgency of dealing

¹²⁵ See Action Overview S.3838—117th Cong. (2021-2022), <https://www.congress.gov/bill/117th-congress/senate-bill/3838/actions>.

¹²⁶ An All-Party Parliamentary Group is an informal cross-party group that has no official status within Parliament. They are run by and for UK Members of the Commons and Lords. Many choose to involve individuals and organizations from outside Parliament in their administration and activities. See UK Parliament, *All-Party Parliamentary Group*, available at <https://www.parliament.uk/about/mps-and-lords/members/apg/>.

¹²⁷ United Kingdom’s All-Party Parliamentary Group on Anti-Corruption & Responsible Tax, *Seizing Corrupt Russian Wealth to Support the Ukrainian War Effort*, (July 26, 2022, available at <https://anticorruption-responsibletax.org/news/seizing-russia-assets>).

¹²⁸ European Commission, *Statement by President von der Leyen on Russian accountability and the use of Russian frozen assets*, (Nov. 30, 2022), available at https://ec.europa.eu/commission/presscorner/detail/en/statement_22_7307.

with fundamental change,¹²⁹ including the development of international law on individual criminal responsibility post-World War II and later again, following moral outrage regarding crimes committed during conflicts in Rwanda and Yugoslavia.¹³⁰ Internationally, there is a great deal of political will calling for the development of such a paradigm shift.

Ultimately, it will be up to States to work together both internationally as well as internally to construct effective strategies to develop the law to make repurposing of frozen Russian assets possible.¹³¹ Such efforts will require navigation of the *realpolitik*, as certain States may be concerned that seizing Russian State-owned assets may result in negative repercussions, ranging from: other States seizing their assets; Russia and other foreign States withdrawing funds from their economies and Central Banks; and fears that international law will unfairly develop to supersede their own domestic powers over foreign policy.

Arising from this increasing wave of political will, various proposals to overcome sovereign immunity have emerged globally, which differ in their range and approach. Further proposals to amend the current sovereign immunity framework or address the limitations it creates include: taking executive action to confiscate assets instead of legislative action;¹³² the creation of an exception to

¹²⁹ This type of transformational moment is sometimes referred to as a “Grotian Moment” or an “international constitutional moment.”

¹³⁰ See, for example, Michael P. Scharf, *Seizing the Grotian Moment*, Cornell International Law Journal, (2010), available at <https://scholarship.law.cornell.edu/cilj/vol43/iss3/1/> (“The United Nations’ International Law Commission (ILC) has recognized that the Nuremberg Charter, Control Council Law Number 10, and the post-World War II war crimes trials gave birth to the entire international paradigm of individual criminal responsibility. Prior to Nuremberg, states were the only subjects of international law, and a state’s treatment of its own citizens within its own borders was its own business. Nuremberg fundamentally altered that conception.”); Michael P. Scharf, *CUSTOMARY INTERNATIONAL LAW IN TIMES OF FUNDAMENTAL CHANGE: RECOGNIZING GROTIAN MOMENTS*, Cambridge University Press, (2013), page 212 (“Grotian Moments are... [often] ushered in by the urgency of dealing with fundamental change.”); Tullio Treves, *Customary International Law*, Max Planck Encyclopedia of International Law (“[R]ecent developments show that customary rules may come into existence rapidly. This can be due... to the urgency of coping with widespread sentiments of moral outrage regarding crimes committed in conflicts such as those in Rwanda and Yugoslavia that brought about the rapid formation of a set of customary rules concerning crimes committed in internal conflicts.”).

¹³¹ Michael P. Scharf, *CUSTOMARY INTERNATIONAL LAW IN TIMES OF FUNDAMENTAL CHANGE: RECOGNIZING GROTIAN MOMENTS*, Cambridge University Press, (2013), page 217 (“Grotian Moment[s][often] began with a custom pioneer - a state (or international tribunal) willing to initiate a new practice contrary to existing customary international law in order to create a new rule of customary international law. However, none of these pioneers took the position that they were breaking new ground. Rather, they followed an approach that can be likened to putting new wines in old bottles, characterizing their innovations as consistent with existing law, when in fact they were fermenting a new vintage.”).

¹³² International Lawyers Projects, Spotlight on Corruption, and the World Refugee & Migration Council, *Frozen Russian Assets and the Reconstruction of Ukraine*, (July 2022), available at <https://www.wrmcouncil.org/wp-content/uploads/2022/07/Frozen-Russian-Assets-Ukraine-Legal-Options-Report-WRMC-July2022.pdf>, at p. 25; see also Anton Moiseienko, *Politics, Not Law, Is Key to Confiscating Russian Central*

sovereign immunity that would apply specifically to Russia and would exclude Russia from the protections typically provided by sovereign immunity (for example, excluding Russia based on the current large-scale armed aggression),¹³³ an exception to sovereign immunity that would exclude a category of States that would include Russia, and would exclude such States from protections typically provided by sovereign immunity (for example, excluding all States that have conducted armed activities that violate a ruling of an international court);¹³⁴ or adopting an exception to sovereign immunity for State sponsors of terrorism, similar to that which exists in Canada and the United States.¹³⁵ As political will to hold Russia accountable continues to build, additional research and development of these proposals to repurpose frozen Russian assets must be pursued.

Conclusion

Ukraine has sustained significant damage as a result of Russia's war of aggression which will necessitate a costly recovery effort. There is interest in using frozen Russian assets to form one source of funds for this effort, yet the quantity of assets that can be repurposed under current legal frameworks is a relatively small percentage of the global frozen Russian assets.

The ability to seize and repurpose Russian assets differ depending on the type of asset. Assets that are owned by individual Russian nationals and private companies may be legally repurposed in a limited set of circumstances. The majority of frozen Russian assets, those that are State-owned, are afforded certain protections and immunities that are understood to prevent them from being legally

Bank Assets, Just Security, (Aug. 17, 2022), available at

<https://www.justsecurity.org/82712/politics-not-law-is-key-to-confiscating-russian-central-bank-assets/>.

¹³³ See International Lawyers Projects, Spotlight on Corruption, and the World Refugee & Migration Council, *Frozen Russian Assets and the Reconstruction of Ukraine*, (July 2022), available at

<https://www.wrmcouncil.org/wp-content/uploads/2022/07/Frozen-Russian-Assets-Ukraine-Legal-Options-Report-WRMC-July2022.pdf>, at p. 25; see also Ingrid (Wuerth) Brunk, Lawfare, *Does Foreign Sovereign Immunity Apply to Sanctions on Central Banks?*, (Mar. 7, 2022), available at

<https://www.lawfareblog.com/does-foreign-sovereign-immunity-apply-sanctions-central-banks>.

¹³⁴ See International Lawyers Projects, Spotlight on Corruption, and the World Refugee & Migration Council, *Frozen Russian Assets and the Reconstruction of Ukraine*, (July 2022), available at

<https://www.wrmcouncil.org/wp-content/uploads/2022/07/Frozen-Russian-Assets-Ukraine-Legal-Options-Report-WRMC-July2022.pdf>, at p. 25; see also Ingrid (Wuerth) Brunk, Lawfare, (Mar. 7, 2022), *Does Foreign Sovereign Immunity Apply to Sanctions on Central Banks?*, available at

<https://www.lawfareblog.com/does-foreign-sovereign-immunity-apply-sanctions-central-banks>.

¹³⁵ See above, page 14. See also European Parliament, *European Parliament Declares Russia to be a State Sponsor of Terrorism* (Nov. 11, 2022), available at

<https://www.europarl.europa.eu/news/en/press-room/20221118IPR55707/european-parliament-declares-russia-to-be-a-state-sponsor-of-terrorism>.

repurposed under current frameworks. Repurposing those assets is likely to require developments in the law that address these protections and immunities.

PILPG Sanctions and Frozen Assets Policy Planning Working Group

This white paper is a work product of PILPG's Policy Planning Working Group on Sanctions and Frozen Assets. This expert working group is one in a series of Ukraine policy planning working groups within the PILPG Policy Planning Initiative, co-chaired by Dr. Paul R. Williams and Alexandra Koch. These working groups provide practical guidance on specific policy questions relevant to Ukraine and its allies in light of Russia's invasion in 2022.

The Sanctions and Frozen Assets Working Group ran for three months and sought to explore the various options of funding sources for Ukraine's reconstruction costs. The working group focused on understanding the sanctions landscape in Russia's war on Ukraine and how Russian frozen assets may be repurposed for purposes of Ukraine's reconstruction. Key considerations included determining the status of the Russian frozen assets, examining the legal frameworks governing sanctions in relevant jurisdictions, identifying potential legal and political hurdles to the confiscation of those assets, and mapping out different avenues regarding the potential repurposing of those assets to Ukraine's reconstruction.

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About the Public International Law & Policy Group Policy Planning Initiative

PILPG's Policy Planning Initiative supports the development of long term, strategic policy planning that is crucial to international accountability, global conflict resolution, and the establishment of international peace. The Initiative provides timely and accurate policy planning analysis and work product on pressing and future policy conundrums by leveraging PILPG's deep network of talent within the international legal and policy communities and experience with its *pro bono* clients globally. PILPG Policy Planning focuses on advising policymakers, policy shapers, and engaged stakeholders on pressing issues within the arenas of international law, war crimes prosecution, and conflict resolution efforts. This includes identifying and addressing gaps within existing policies, anticipating key conundrums and questions that will riddle future policy decisions, applying lessons learned from comparative state practice, and proactively producing and sharing work product to inform such policies and avoid crisis decision making.